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Henry JEVERS, Esq;**Appellant.****Margaret Waters, alias Wilson, alias JEVERS,****Widow and Relict of John JEVERS, Esq; de-****ceased, Augustin JEVERS, and Arthur Blener-****hassel, Esq; Executors of the said John Je-****vers,****Respondents.****The Appellant's C A S E.**

JOHN JEVERS Father of the Appellant, being, in his Life-time, seized in Fee, of the several Lands, Tenements, and Hereditaments, of *Turghbrough, Carrowmore, Ballybraggen, Ballintlea, and Killacully*, together with several other Lands situate in the County of *Clare*, in the Kingdom of *Ireland*,

19 Apr. 1692.
Articles.

by Articles of Agreement bearing Date the 19th Day of *April 1692*, in Consideration of a Marriage then intended (and shortly after had) between the said *John JEVERS* and *Ellen Fitzgerald* (Daughter of *Augustin Fitzgerald, Esq;*) and of 1000 *l.* Marriage Portion of the said *Ellen*, the said *John JEVERS* did, amongst other things, thereby covenant with the said *Augustin Fitzgerald*, to limit and settle all and singular the Premises to and upon the said *John JEVERS*, for Life: Remainder to the first and every other Son of the said Marriage, in Tail Male, with divers Remainders over, and without any Power of making a Jointure on any second Wife he might marry.

The said *John JEVERS* had Issue by his said Wife, the Appellant his eldest Son, and several other Sons and Daughters.

The said Articles were never carried into Execution, nor any Settlement made pursuant thereto; and the Appellant's Mother dying during the Infancy of the Appellant, he had not the least Notice of the said Articles, and the same were industriously concealed from him, and the said *John JEVERS* passed for being absolute Owner of the Inheritance, and accordingly took upon himself, from time to time, both to mortgage, and sell a considerable Part of the Premises, to the Value of 10000 *l.* and upwards.

1718, Appel-
pellant attain-
ed the Age of
21.

The Appellant having attained the Age of 21 Years, in the Year 1718, the said *John JEVERS*, pretending he was seized in Fee of the Premises, proposed to the Appellant, to join with him in making a Settlement of what was left undisposed of the said Estate, not then of the clear yearly Value of 500 *l.* to the Uses after-mentioned.

1718.
Settlement.

The Appellant being persuaded by his Father, he was seized in Fee of the said Estate, and that he had, as the said *John JEVERS* told the Appellant, an absolute Power over the Estate, and could make what Settlement he pleased, without the Concurrence of the Appellant; and the said *John JEVERS* having refused to make any Allowance to the Appellant for his Maintenance or Support, in case he declined joining in such Settlement: the Appellant, under these Circumstances, and having no Notice of the said Articles, was prevailed upon to join in a Settlement of the said Premises, whereby they were limited to the Use of the said *John JEVERS* for Life;

Life; Remainder to Trustees for a Term of 600 Years, in Trust, to raise the Sum of 6000 *l.* for Portions and Maintenance for younger Children; Remainder to the Appellant for Life; Remainder to his first and every other Son in Tail Male, with Remainders over, but with a Proviso, that it should and might be lawful to and for the said *John Fevers*, and every of his said Sons, when in Possession of the Premises, by Indenture under their respective Hands and Seals, testified by three or more credible Witnesses, to grant, limit, or appoint any particular Parcels of the said Lands and Premises, as a Jointure to any Woman, he or they should thereafter respectively marry, for her or their Life or Lives, for her or their Jointure, so as the said Premises so to be limited did not exceed 200 *l. per Annum*, and so as no such Jointure be made dishonourable of Waste, with Power to him, by and with the Consent and Approbation of the Appellant, revoke, annul, and make void the said Settlement, or any Part thereof, or any of the Uses, Grants, or Limitations, thereby made.

And the better to engage the Appellant to concur in the said Settlement, the said *John Fevers*, at the same time, settled on the Appellant, for his present Maintenance, an Estate in the said County of *Clare*, then represented to be worth 240 *l. per Annum*, but which did not afterwards in reality bring in 90 *l.* a Year, after a Deduction of Interest for Incumbrances with which the same had been before affected, and other Outgoings.

Soon after perfecting of this Settlement, the Appellant's Father intermarried with the Respondent *Margaret*, who was then a Widow with several Children, and intitled to no other Fortune than two several Leasehold Farms in the Counties of *Limerick* and *Tipperary*, subject to considerable reserv'd yearly Rents.

The Respondent *Margaret* insists, the Appellant's Father, before such Intermarriage, executed a Bond to *John Jephson*, Esq; in the Penalty of 2000 *l.*, conditioned, that the said Appellant's Father should, after the said Marriage, settle a Jointure of 200 *l. per Annum* on the Respondent *Margaret* for Life.

The said *John Fevers* never executed any Deed for settling a Jointure upon the Respondent *Margaret*; but upon several Occasions, after his Inter-marriage, laid out considerable Sums of Money for the Benefit and Advantage of the Respondent *Margaret*, and more particularly the Sum of 1300 *l.* as a Fine paid upon the Renewal of one of the said Leasehold Estates, which could not but be considered, in a great Measure, as a Satisfaction for the said Amount; and it does not appear, that either the Respondent herself, or her said Trustee Mr. *Jephson*, applied to the said *John* to settle any Jointure upon her, tho' he lived ten Years after.

The Respondent *Margaret* by her Bill charged, that the said *John Fevers* had, in his last Illness, directed a Deed to be prepared and ingrossed, for limiting Part of the Premises upon her for a Jointure; but it appeared in Evidence, that the said *John Fevers*, tho' much importuned, refused to execute the same, and, in Fact, no such Deed was ever executed.

The said *John Fevers*, on the 3d of *December*, 1729, died, having first made his last Will and Testament, and thereby, amongst other Things, bequeathed to the Value of 800 *l.* to the Respondent *Margaret*, and thereof appointed the Respondents *Arthur Blenerhassett* and *Augustin Fevers*, Executors.

Easter-Term
1730. Resp.
Bill.

Notwithstanding the Bequests so made to the Respondent *Margaret*, (of which she immediately possessed herself) together with the several Sums before laid out for her Benefit and Advantage by the said *John Fevers* in his Life-time, far exceeded the Sum of 2000 *l.* the Penalty of the said Bond, and was a Consideration more than adequate for any Provision which she should claim under the said Bond or Obligation, yet in *Easter Term* 1730 she exhibited her Bill in the Court of *Exchequer* in *Ireland* against the other Respondents, and the Appellant praying either that the said Executors, or such others as possessed themselves of the personal Estate of the said Testator, might, out of the Testator's personal Estate, pay and satisfy the said 2000 *l.* Penalty of the said Obligation, with Interest for the same, since the Testator's Decease, or that she might be decreed to, and put in Possession of so much of the said settled Premises as should appear to be of the Value of 200 *l. per Annum*, and be paid the Arrears thereof grown due since the Testator's Death.

The

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Answer.

26 June 1733.
DECREE.

The Appellant put in his Answer to the said Bill, and thereby (amongst other Things) insisted upon the Benefit of the said Articles in 1692, that he had never seen or been made acquainted with, or had the least Notice of the said Articles, at the Time of his being drawn in to execute the said Settlement in 1718; that as his Title under the said Articles was not disclosed, but industriously concealed from him, the Settlement of 1718 was a Fraud upon him, and he was not to be bound thereby, nor obliged to make any Settlement upon the Respondent *Margaret*; and the said other Parties also put in their Answers, and Issue being joined, several Witnesses were examined, and Publication having been duly past, the Cause was heard upon the 28th, 30th, and 31st Days of *May*, 1733; and the said Court having taken Time to consider thereof, were afterwards, upon the 26th Day of *June* following, pleased to order and decree, that the Appellant should, by sufficient Deeds, convey to, and settle on the Respondent *Margaret*, so much of the said Premises, as should, in the Whole, amount to the clear yearly Value of 200*l.* to be by her held and enjoyed, as a Jointure for and during the Term of her natural Life, and that the Appellant should account with her for the Arrears of the said 200*l.* since the Death of the Appellant's Father, and that it should be referred to the chief Remembrancer to state and audite the said Account.

From which Decree the Appellant hath Appealed to your Lordships, and humbly conceives, and is advised, that the same is erroneous, and ought to be Reversed, for the following, amongst many other Reasons.

- I. For that the Appellant was by Fraud and Concealment of the Articles in 1692, drawn in to join in making the said Settlement of 1718, and ought not to be bound thereby.
- II. For that the said *John Fevers*, by the said Settlement, had only a Power to limit any particular Parcel of the Lands in the Deed mentioned, not exceeding 200*l.* a Year, as a Jointure, but he has never made Use of that Power, or executed any Deed for that Purpose; and it seems unreasonable to compel the Appellant to make a Settlement, which his Father, who had the Power, never thought fit to do.
- III. For that the said Bond or Obligation being only conditioned for the Settlement of a Jointure of 200*l.* without referring to any particular Estate out of which such Provision should be made, or was intended for the Respondent, the same ought not to create any real or specifick Lien upon the Lands comprized in the said Articles, under which the Appellant appears to have been a Purchaser for a valuable and meritorious Consideration.
- IV. For that the Respondent *Margaret* relied upon the Bond given by the Appellant's Father, without having any Deed executed, in Pursuance of the Power in the Settlement, she ought to claim Satisfaction out of the Testator's personal Estate, and, if she gives Credit, as the Appellant apprehends she ought, for what she has received, she will have more than an adequate Satisfaction for her Demand under the said Bond.

Wherefore the Appellant, for the Reasons aforesaid, and divers others, humbly hopes the said Decree shall be Reversed, or varied for the Appellant's Relief, in such manner as to your Lordships shall seem meet.

N. FAZAKERLEY.
WILL. HAMILTON.

Henry Jevors, Esq; - Appellant.

Margaret Jevors, Widow, } Respondents.
and others, }

The Appellant's CASE.

**To be heard at the Bar of the House
of LORDS, on the
Day of 1734-5.**

WILLIAM HAMILTON
N. TAYLOR